REMARKS

This paper is submitted in response to the final official action dated September 1, 2009, wherein (a) claims 12-14, 16-23, and 26-29 were pending; (b) claims 18-22 and 27-29 were withdrawn; (c) claims 12-14, 16, 23, and 26 were rejected under 35 U.S.C. §103(a) as obvious over Doi (U.S. Patent No. 4,309,585) in view of Hess (DE 3,119,496) and Löffler (WO 98/48679); and (d) claim 17 was rejected under 35 U.S.C. §103(a) as obvious over Doi (U.S. Patent No. 4,309,585) in view of Hess (DE 3,119,496), Löffler (WO 98/48679), and Yoshida (U.S. Patent No. 4,350,858).

By way of the foregoing, claim 12 is amended for clarity, and withdrawn claims 18-22 and 27-29 are canceled. Support for the amendment to claim 12 can be found in paragraph [0038] of U.S. Patent Application Publication No. 2006/0013933, for example, which constitutes the published version of the present application. Therefore, no new matter is added.

Claims 12-14, 16, 17, 23, and 26 are pending and at issue.

Favorable consideration of the application, as amended, is solicited.

AMENDMENTS PROPER FOR ENTRY

The accompanying amendment to claim 12 is proper for entry under 37 C.F.R. §1.116 because it does not present new issues requiring further search or consideration. Specifically, the newly recited language is merely clarifying and does not change the scope of the claim.

REJECTIONS UNDER 35 U.S.C. §103

INDEPENDENT CLAIM 12

Independent claim 12 is directed to a method for conducting a cooking process that comprises, in part, detecting non-insertion of a cooking process probe by detecting a value or characteristic over a period of time or by forming time derivatives. Moreover, claim 12 is amended herein to clarify that upon detecting non-insertion of the cooking process probe ***into the item to be cooked***, a first

warning signal is emitted, a changeover is made to an emergency program, and/or a cooking program is aborted.

In formulating the obviousness rejection of claim 12, the outstanding official action asserts that Doi discloses a method that detects non-insertion of a cooking process probe, wherein detection is determined over time "in that when a cook start switch is actuated a period of time will have elapsed prior to a warning signal being emitted." Official action, item 3, page 2.

First, the applicants submit that a person having ordinary skill in the art would not understand Doi as disclosing detection of non-insertion over a period of time, as interpreted by the examiner and recited in claim 12. To the contrary, a person having ordinary skill in the art would understand Doi as disclosing detection of non-insertion that occurs instantaneously. For example, Doi describes that "when the cook start switch 22 is actuated...[a] second AND gate 60 also receives a signal derived from a second pattern generator...[which] stores a code signal for achieving an alarm display, for example, "PRObE". See Doi, Column 4, lines 28-38. The foregoing logic set forth by Doi is performed on a control circuit and, as such, any delay would be so minimal that it would not be noticed. Accordingly, a person having ordinary skill in the art would never consider the control logic of Doi to be performed "over a period of time," as recited in claim 12.

Moreover, while Doi can be described as generally disclosing the detection of non-insertion of a cooking process probe, the applicants respectfully submit that Doi does not disclose the detection of non-insertion of a cooking process probe ***into an item to be cooked***, as recited in amended claim 12. Rather, Doi merely discloses the use of a detection switch 48 for detecting whether a plug 280 of a temperature sensor probe 28 is inserted into a socket of the cooking appliance. See Doi, column 4, lines 1-4. Based on this disclosure of Doi, it is impossible to detect whether the temperature probe has been correctly positioned within an item to be cooked, as recited in claim 12 because the probe could easily be connected to the socket, but not inserted into the item to be cooked.

Accordingly, based on the foregoing, Doi cannot render claim 12 obvious because Doi fails to disclose detection of non-insertion of a cooking process probe into an item to be cooked by detecting a value or a characteristic over a period of time or by forming time derivatives, and nothing in Doi or any other reference would suggest or otherwise lead a skilled reader to depart from Doi's teachings to arrive at the inventive method, as claimed.

Accordingly, no prima facie case of obviousness of claim 12 can be based on Doi, alone, or in combination with Hess and/or Löffler.

For example, Hess neither directly nor indirectly discloses detecting non-insertion of a cooking process probe into an item to be cooked. This point was conceded in the official action. See official action, item 4, page 2.

Löffler discloses a cooking process in which a cooking process probe is inserted into an item to be cooked, and time derivatives are used to bring the item to a desired end core temperature. Moreover, Löffler discloses a pretesting phase wherein input cooking parameters are checked for plausibility, and if they are not plausible, the process can be aborted. During the pretesting phase, the cooking process is disclosed as being inserted in the item to be cooked. In view of the foregoing, the official action asserts that it would be obvious to a skilled artisan that the method of Löffler could include detecting non-insertion of the probe in the item to be cooked because "if the probe was not inserted into the item to be cooked the rate of change with respect to a measured cooking parameter would progress at a rate much greater than expected thus causing the cooking process to be terminated prior to completion..." See official action, item 5, page 3 to page 4.

The formulation of obviousness based on Löffler and set forth in the official action constitutes hindsight reasoning gleaned from the applicants' own disclosure, which is clearly improper under the rules of the patent office. See MPEP §2145. Löffler does not mention or even suggest the existence of a problem associated with non-insertion of the process probe into the item to be cooked, let alone that such non-insertion could be detected based on an analysis of measured values, as recited in claim 12.

Additionally, the official action seems to have mischaracterized the disclosure of Löffler, especially the disclosure relating to the pretesting phase. The official action states that if the cooking process probe was not inserted into the item to be cooked, the probe would detect a starting core temperature outside of the previously set parametric value. Thus, the official action seems to state that the values measured by the cooking process probe are analyzed during the pretesting phase. This is incorrect. It is clearly stated on page 12 of Löffler that, before step 100, the user of the cooking appliance inputs the type of item to be cooked, a desired core final temperature, a desired final temperature within a cooking compartment, and a desired final humidity within the cooking compartment. Only these inputs are analyzed for plausibility and only these user defined parameters may lead to an abortion of the cooking process disclosed by Löffler, irrespective of the measured values of the cooking probe.

If the method of Löffler was performed based on the interpretation set forth in the official action, it would never be possible to start a cooking process because the item to be cooked is raw when it is positioned within the cooking compartment and its core temperature will always be below the desired values entered by the user. This especially shows that during the plausibility check only values entered by a user and not the measured values of the cooking process probe are analyzed.

In summary, claim 12 is not obvious over Doi, Hess, and Löffler because none of these references, alone or in combination, disclose or suggest the use of values measured by a cooking process probe to identify a non-insertion of the probe within an item to be cooked. In contrast, all of these references disclose using measured values solely to receive information about the item to be cooked, but not information regarding the status of the probe itself.

INDEPENDENT CLAIM 23

As presented in response to the previous official action, independent claim 23 is directed to a method for conducting a cooking process that comprises, in part, automatically monitoring to detect non-insertion of a cooking process probe. More specifically, claim 23 defines the automatic monitoring as including determining (1)

whether the cooking process probe is in a standby position in a retaining device, or (2) whether the cooking process probe is in a measuring position in a positioning device which positions the cooking process probe for insertion into the item being cooked.

The outstanding official action cites Doi, Hess, and Löffler to argue against the patentability of subject matter of claim 23. As stated above, the official action concedes that Hess fails to disclose an automatic monitoring to detect a non-insertion of a cooking process probe into an item to be cooked. Moreover, as also stated above, Doi and Löffler each fails to disclose such automatic monitoring and detection.

Furthermore, no cited reference discloses a method that differentiates between a stand-by-position of a cooking process probe and a measuring position of the same to detect a non-insertion of the cooking process probe within an item to be cooked. Accordingly, claim 23 is and not obvious over the applied art.

In light of the foregoing, the cited prior art fails to disclose or suggest each and every element recited in amended independent claims 12 and 23.

Accordingly, reconsideration and withdrawal of the outstanding anticipation and obviousness rejections are respectfully requested.

CONCLUSION

If there are any issues that the examiner believes may be remedied by telephone conference, please feel free to contact the undersigned at (312) 474-6300.

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Respectfully submitted,

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